UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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ART UNIT	PAPER NUMBER
3623	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Patents@chadbourne.com

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _11 August 2011_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

5)☒ Claim(s) _1-9 and 20_ is/are pending in the application.

    5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) _1-9 and 20_ is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Status of Claims

1.   This action is a Non-final rejection in reply to the election filed on 11 August 2011.

2.   Claims 1-21 were subject to a restriction requirement, Claims 1-9 and 20 were elected with traverse.

3.   Claims 1-9 and 20 are currently pending and have been examined.

Election/Restrictions

4.   Applicant's election with traverse of Claims 1-9 and 20 in the reply filed on 11 August 2011 is acknowledged. The traversal is on the ground(s) that there is no undue burden for the examiner to conduct a substantive search. This is not found persuasive because this application is a 371 of PCT/CN2005/000400 and contains inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

        The groups of inventions listed do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

        Group I illustrates a special technical feature where impression data and other data types are analyzed to determine predictive customer data. Specific features related to confidence, transactions and historic dealings are analyzed to predict customer related data. Group II describes a special technical feature

where a number of modules which work together to analyze salesperson performance and other data sources to generate sales forecasts. Group I does not contain the concept of sales forecasting based on the specific features described in Group II such as salesperson performance parameters and Group II does not describe the ability to analyze impression data based upon confidence indicators or transaction specific data. Each analysis is based upon different features of sales management and produce different analytical results; therefore, there is no general inventive concept. Group III illustrates a special technical feature relating to predictive sales management where analysis is performed on different phases of a purchase process to develop and implement customer needs management strategy. Neither Groups I or II describe any features relating to an analysis that considers phases of a purchase process or outputs a needs management strategy. These features define the contributions which each of the claimed inventions attempt to make over the prior art. No single general inventive concept is claimed and the claims are not considered alternatives to one another.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 101

5.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6.   Claims 1-9 and 20 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

7.   Claims 1-9, as recited, are directed towards a system for sales management. The recited components of the system appear to lack the necessary physical components (hardware) to constitute a machine or manufacture under § 101. A database does not necessarily illustrate structural hardware, nor does an interface; both can be considered software elements similar to the modules for predictive customer data determination and predictive customer data access. Therefore, these claim limitations can be reasonably interpreted as computer program modules or software per se due to the lack of sufficient structure. Software is not one of the defined statutory classes and is hence rendered non-patentable subject matter. The mere recitation of a system or apparatus in the preamble does not satisfactorily depict the subject matter which the applicant regards as the invention.

8.   Claim 20 is directed towards a method for predictive sales management. However, the recited steps of the method are held to be non-statutory subject matter because based upon consideration of all the relevant factors with respect to the claim as a whole, claim 20 appears to claim an abstract idea which is considered ineligible subject matter under 35 U.S.C. 101. The rationale relied upon to make the determination with regards to non-statutory subject matter is the insufficient recitation of machine in a significant step of the methodology. Neither implementing a database nor interacting with an interface which receives data are considered more than nominal steps.

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the
invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

10.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or
       nonobviousness.

11.   This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject

matter of the various claims was commonly owned at the time any inventions

covered therein were made absent any evidence to the contrary. Applicant is

advised of the obligation under 37 CFR 1.56 to point out the inventor and

invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35

U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35

U.S.C. 103(a).

12.   **Claims 1-9 and 20 are rejected under 35 U.S.C. 103(a) as being**

unpatentable over Lortscher, JR. (US 2004/0153389 A1) in view of Van Der Riet (US 2003/0126146 A1).

13.   As per **Claims 1 and 20** Lortscher teaches:

A sales management system and method comprising:

- *(implementing) a sales management system customer resource database* (Lortscher in at least [0073-0075] and Fig. 1B illustrates a series of databases in a system for generating transaction recommendations, item 108 illustrates a profile database, item 110 illustrates a transaction database, item 115 illustrates a completed assessments database, and item 118 illustrates a completed evaluations database as is described in at least [0051-0053])*;*

- *(interacting with) a system user interface configured to receive system user customer data and populate the system customer resource database with the system user customer impression data* (Lortscher in at least [0011] describes capturing data and loading it into a database via the exemplary interfaces illustrated in at least Figs. 12 and 13, [0014,] describes receiving data in a database, [0064] describes how the system accounts for a user's stated/input preferences and goals)*;*

- *a predictive customer data determination module configured to analyze customer data* (Lortscher in at least Fig. 5 illustrates a process for gathering data and evaluating the data) *and determine predictive customer data* (Lortscher [Abstract] describes generating recommendation data, i.e. predictive customer data, [0003] describes analyzing investor, performance

and action data to generate recommendations, [0014, 0033-0034, 0044, 0046] describes generating recommendation data),

- *wherein the analysis is conducted based on customer impression data including system user data, a customer confidence indicator, transaction specific data and customer specific historical dealing data* (Lortscher in at least Fig. 5 illustrates gathering past transaction data (i.e. transaction specific data and historical dealing data), industry data, object data, action data, user data, and market info to calculate a competence, similarity and confidence level(i.e. confidence indicator), [0012-0013] describes basing a recommendation on an evaluation of data and degree of confidence, [0035 and 0039] describe confidence and generating confidence indications); *and*

- *(providing) a predictive customer data access module configured to provide the determined predictive data to a system user* (Lortscher in at least Fig. 1B item 111 illustrates a user evaluation access point, [0012] describes delivering recommendation data to the subscriber.

    Lortscher teaches storing customer resource data in a database where the data includes user input data, confidence indicators, transaction specific data, historic dealings, etc. which are analyzed to predict and provide predicted data to a user. Lortscher does not explicitly recite that the analyzed user input data is impression data. However, Van Der Riet teaches a marketing communications and transaction distribution services platform for building and managing personalized customer relationships. Van Der Riet further describes in at least

[0041] an illustrated in Figs. 12(a)-(c) the ability to collect consumer attitude information and feedback information which can be reported to advertisers and retailers so that the attitudes and responses can be assessed to predict and assess effectiveness as is described in at least [0182-0185].

Therefore, it would be obvious to one of ordinary skill in the art to modify the transaction based recommendation generation system which analyzes a vast variety of data to make recommendations, e.g. predictions for successful transactions with the techniques for analyzing consumer opinions and feedback to determine the effectiveness of an advertisement or marketing campaign because by including a user's response to a previous transactions or a user's feelings with regards to a particular transaction the combination enables a prediction system which is more customized for an individual user's response to a transaction which will improve the overall success of future transactions by incorporating individual user history into the analysis and future actions implemented which will in turn yield improved performance and sales by improving customer response.

Furthermore, it would be obvious to one of ordinary skill in the art to substitute consumer ratings, opinion data or attitude data for any of the user data included in Lortscher because the prior art differs from the claim by the simple substitution of data types. Each of the types of data were known and the technical ability existed to substitute the types of data as claimed yielding a predictable result. By incorporating the consumer ratings and feedback into the

recommendation system, the combination enables a customized generation which can be personalized for individual users as well as aggregated to yield an overall improved process by accounting for customer response to previous transactions.

14.   Lortscher in view of Van Der Riet teach the limitations of Claim 1 above. As per **Claim 2** Lortscher further teaches:

- *wherein the predictive customer data module analyzes the customer data* (Lortscher in at least Fig. 1B illustrates an assessment engine and evaluation engine for analyzing data as is described in [0012-0014, 0033-0040, *which includes data, a relating status indicator, views on criteria, buying points and selling points, data related to the phases of the purchase process, and data related to characteristics associated with at least one key person corresponding to a particular customer* (Lortscher [0076] describes accounting for different points in the investment evaluation process by updating records as information is discovered, e.g. phases of a purchase process, [0060, 0069, 0081] describes transaction control data, such as "buy", actions such as "not buy" or "hold", and "sell" or "buy" transactions, [0048, 0052-0054] describes using characteristics of users and data to generate recommendation data, [0088] describes preferences and transaction criteria, e.g. views on criteria, [0154] describes utilizing status information).

      Lortscher does not explicitly recite that the analyzed data is impression data which includes a customer attitude indicator. However, Van Der Riet

teaches a marketing communications and transaction distribution services platform for building and managing personalized customer relationships. Van Der Riet further describes in at least [0041] an illustrated in Figs. 12(a)-(c) the ability to collect consumer attitude information and feedback information which can be reported to advertisers and retailers so that the attitudes and responses can be assessed to predict and assess effectiveness as is described in at least [0182-0185]. Van Der Riet further teaches in at least [0174] the ability to provide specific consumer ratings and opinions which are considered valuations indicating a customer's attitude. Van Der Riet is combined with the primary reference based on the reasons and rationale set forth in the rejection of Claim 1 above.

15.   Lortscher in view of Van Der Riet teach the limitations of Claim 2 above. As per **Claim 3** Lortscher further teaches:

- *wherein the predictive customer data module analysis includes a translation of a system user's customer data to derive a customer's confidence indicator* (Lortscher in at least Fig. 5 step 5-3 illustrates calculating a confidence level from evaluated data and indicators, [0035] describes a calculated indicator describing confidence, [0055] describes how the system performs an assessment to calculate (i.e. translating data to derive) confidence levels, [0100-0103 and 0113] describe how the assessment calculates a confidence rating from the transaction data in the evaluation process).

Lortscher does not explicitly recite that the data relied upon to calculate

the confidence is a customer attitude indicator valuation. However, Van Der Riet teaches a marketing communications and transaction distribution services platform for building and managing personalized customer relationships. Van Der Riet further describes in at least [0041] an illustrated in Figs. 12(a)-(c) the ability to collect consumer attitude information and feedback information which can be reported to advertisers and retailers so that the attitudes and responses can be assessed to predict and assess effectiveness as is described in at least [0182-0185]. Van Der Riet further teaches in at least [0174] the ability to provide specific consumer ratings and opinions which are considered valuations indicating a customer's attitude. Van Der Riet is combined with the primary reference based on the reasons and rationale set forth in the rejection of Claim 1 above.

16.   Lortscher in view of Van Der Riet teach the limitations of Claim 2 above. As per **Claim 4** Lortscher further teaches:

- *wherein the predictive customer data module is configured to facilitate a system user designing a sales event that includes at least buying and selling points for the at least one customer key person* (Lortscher [0014] describes using the evaluation techniques and system to generate recommendation data which may include proposed transactions (i.e. designed sales events for a user) with particular objects, a particular object price, size, name, and/or source as is described in [0016], [0060, 0069, 0077-0078, 0081] describes transaction control data, such as "buy", actions such as "not buy" or "hold",

and "sell" or "buy" transactions for the receiving user, and the ability to develop rules for creating and maintaining the assessment and evaluation (i.e. facilitating user design of an event).

17.   Lortscher in view of Van Der Riet teach the limitations of Claim 4 above. As per **Claim 5** Lortscher further teaches:

- *wherein the predictive data module is configured to facilitate development of an action plan* (Lortscher [0014] describes using the evaluation techniques and system to generate recommendation data which may include proposed transactions (i.e. developing an action plan) based on the data of the transactions determined to be relevant, [0077-0078] describe developing rules which govern the creation and maintenance of transactions, assessments and evaluations) *and related cost estimates* (Lortscher in at least [0044] describes that the recommendations relate to reliable financial investment recommendations, e.g. cost estimates, [0066] describes taking costs directly into account in order to adjust evaluations based on cost and to highlight contingencies to a subscriber).

18.   Lortscher in view of Van Der Riet teach the limitations of Claim 5 above. As per **Claim 6** Lortscher further teaches:

- *a sales event evaluation module configured to facilitate a sales event assessment analysis* (Lortscher in at least Fig. 1 B items 112 and 116 illustrate assessment and evaluation engines to assess transactions, i.e. sales events, Fig. 8 item 8-1 illustrates retrieving assessment records for

evaluation of completed transaction assessment, [0012] describes evaluating the assessment output as is further described in at least [0039-0040], Fig. 1 is described in [0051] as a transaction evaluation system for analyzing transaction information, the analysis capabilities are further described in at least [0062, 0073, 0076-0077, 0085 and 0116).

19.   Lortscher in view of Van Der Riet teach the limitations of Claim 6 above. As per **Claim 7** Lortscher further teaches:

- *wherein the sales event evaluation module is configured so that a system user can store data describing the sales interaction with the customer related to the results of the designed sales event* (Lortscher in at least Fig. 1B item 115 illustrates a completed assessments database, item118 illustrates a completed evaluations database (i.e. a module configured to store interaction data related to the results of a transaction), Fig. 8 item 8-4 illustrates storing the results of an evaluation as is further described in at least [0012, 0051, 0062, 0069-0070, 0076-0078, 0085 and 0117]).

20.   Lortscher in view of Van Der Riet teach the limitations of Claim 7 above. As per **Claim 8** Lortscher further teaches:

- *wherein the sales event evaluation module is configured so that a system user can evaluate the success of a sales event* (Lortscher in at least Fig. 9A illustrates evaluating the success of transactions by aggregating assessments and corresponding rules, [0012] describes using the assessments and evaluations to estimate the effectiveness of various courses of action, [0062]

describes using different analysis calculations to determine if a course of

action is successful as is further described in [0090, 0110, 0116]).

21.   Lortscher in view of Van Der Riet teach the limitations of Claim 8 above. As per

Claim 9 Lortscher further teaches:

- *a sales forecasting module configured to facilitate system user research for a*

  particular customer based on a customer's sales events (Lortscher [0033-

  0034] describes the ability to identify distinct styles and goals of specific

  traders or entities with distinct records of transactions that can be assessed

  by the system by receiving past transaction histories, [0062] describes the

  ability to perform additional supplementary calculations as a function of

  aggregating evaluations to determine based on historical info (i.e. facilitating

  research for a particular customer based on past data) particular probabilities

  or course of action which were successful and other similar user's likelihood

  of success, [0065] describes making evaluations available to subscribers in

  varying degrees of detail to develop investing strategies of their own

  independent of system algorithms, users have the ability to search (i.e.

  research) and track individual transactions, users, activities, etc. [0084-0085,

  0089, 0149, 0151] describes requesting particular evaluations and selecting

  assessments so that results can be displayed and analyzed).

Conclusion

22.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

- Kesel (US 5,822,744) Consumer Comment Reporting Apparatus and
  Method.

- Kowalchuk (US 7,472,072 B2) Systems and Methods for Targeting
  Consumers Attitudinally Aligned with Determined Attitudinal Segment
  Definitions.

- Blackshaw et al. (US 2006/0253316 A1) Consumer to Business Data
  Capturing System.

23.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Stephanie Zagarella whose telephone number is

(571)270-1288. The examiner can normally be reached on Mon-Fri 7 to 4 EST.

If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax

phone number for the organization where this application or proceeding is

assigned is 571-273-8300.

Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

for published applications may be obtained from either Private PAIR or Public

PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free). If you would like assistance from a USPTO Customer Service

Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

/Stephanie Zagarella/
Examiner, Art Unit 3623
13 September 2011

/BETH V BOSWELL/
Supervisory Patent Examiner, Art Unit 3623